IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

Crl.MC.No. 1506 of 2007()

MC.29/2006 BY THE COURT OF SUB DIVISIONAL MAGISTRATE, KSARAGOD AT KANHANGAD

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PETITIONER: PETITIONER/ACCUSED

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1. ABDUL LATHIEEF (20 YRS),
   S/O.MOIDEENKUNHI,
   IST SIGNAL,UDYAVAR,
   KASARAGOD TALUK.

2. MOIDEENKUNHI (42 YRS),
   S/O.KUNHIPPA,
   GOA COMPOUND,
   UDYAVAR.

3. MOHAMMED ASHRAF (22 YRS),
   S/O.ABDULLA,
   GOPI COMPOUND,
   BADAJI VILLAGE.

4. ISMAIL ASHIK (19 YRS),
   S/O.MOOSA,SHABEER MANZIL,
   10TH MILE,UDYAVAR.

5. KABEER (21 YRS),
   S/O.BAPPAKUNHI @ T.S.BAPPAKUNHI,
   IST SIGNAL,UDYAVAR.

6. MOHAMMED RAFEEQ (22 YRS),
   S/O.MOIDEENKUNHI,
   ALEEMA MANZIL,
   IST SIGNAL,UDYAVAR.

7. FIROZ (39 YRS),
   S/O.ADEMKUNHI,
   V.H.HOUSE,J.M.ROAD,
   UDYAVAR.

8. SHAMEER (19 YRS),
S/O.MOHAMMED,
IST SIGNAL,UDYAVAR.

9. HANEEF (28 YRS),
S/O.MOHAMMED,
SAMEER MANZIL,
UDYAVAR.

10. SAMAD (18 YRS),
S/O.MOHAMMED,
IST SIGNAL,
UDYAVAR.

BY ADV. SRI.T.B.SHAJIMON
SMT.GOVINDU P.RENUKADEVI

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA,
REP.BY S.I.OF POLICE,
MANJESHWER,REP.BY PUBLIC PROSECUTOR,
KERALA HIGH COURT,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.1506 OF 2007

Dated this the 8th day of June, 2007

ORDER

The petitioners are the counter petitioners in M.C.No. 29/06 before the Sub Divisional Magistrate, Kanhangad. The Sub Inspector of Police filed a report before the Sub Divisional Magistrate alleging that he apprehends that the petitioners may indulge in crimes affecting public peace and tranquility. A report dated 31/5/07 was prepared. An F.I.R. was registered and the report was submitted to the Sub Divisional Magistrate. In the report, it is alleged that the petitioners are involved in another crime i.e., Crime No.335/06 punishable, inter alia, under Sec.153-A read with Sec.149 of the IPC. The crux of the allegations is that on account of communal hatred disharmony, the petitioners attempted to throw stones at the house of a person belonging to a different community who was responsible for organizing a meeting. Preliminary order

directing the petitioners to show cause has been issued by the Sub Divisional Magistrate. The Sub Divisional Magistrate accepted the apprehension aired by the Sub Inspector of Police in his report duly counter signed by the superiors in the hierarchy that there is an apprehension of breach of peace and disturbance to public tranquility. It is, in these circumstances, that the police officer allegedly in his anxiety to maintain peace and harmony within his jurisdiction initiated proceedings against the petitioners.

2. The learned counsel for the petitioners wants this Court to invoke the powers under Sec.482 of the Cr.P.C. to quash the proceedings. What is the reason? The short contention raised before me by the learned counsel is that there is only one case registered against the petitioners and, in these circumstances, the apprehension raised cannot be held to be reasonable.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the official concerned was only discharging his duty. No failure/miscarriage of justice results from the impugned order. The petitioners must appear before the Sub Divisional Magistrate and show cause as directed. They have to raise their contentions before

the Sub Divisional Magistrate. At the moment and with the available materials, there is no necessity to invoke the powers under Sec.482 of the Cr.P.C.

4. I find merit in the opposition by the learned Public Prosecutor. It is not the number of the earlier instances of crime which is crucial while considering the sustainability of proceedings under Sec.107 of the Cr.P.C. The nature of the previous offence, the motivation, the manner of execution etc., are of crucial relevance when a public official claims initiation of security proceedings in his anxiety to prevent the breach of peace. Significantly, no specific allegation of mala fides is raised.

5. Having rendered my very anxious consideration to the question, I am of opinion that the petitioners have not succeeded in showing any failure/miscarriage of justice or abuse of process of the court against the petitioners. The petitioners must resort to the ordinary and normal procedure appearing before the Sub Divisional Magistrate and must show cause against the proposed order under Sec.107 of the Cr.P.C.

6. This Crl.M.C. is, in these circumstances, dismissed. I may hasten to observe that I have not intended to express any

opinion on merits about the acceptability of the rival contentions. I have only chosen to hold that the powers under Sec.482 of the Cr.P.C. cannot and need not be invoked in the facts and circumstances now. The petitioners shall be entitled to raise all their contentions before the Sub Divisional Magistrate.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge